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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

(Portland Division)

**PACIFIC NORTHWEST REGIONAL
COUNCIL OF CARPENTERS**, a labor
organization, on behalf of its member **BILL
JENKINS**,

Plaintiff,

v.

KELAYE CONCRETE, LLC, an Oregon
corporation,

Defendant.

Case No. 3:16-cv-02242-SI

**DECLARATION OF MATTHEW E.
MALMSHEIMER**

1. I, Matthew E. Malmsheimer, am an individual over the age of 18 years of age and I make the following statements with personal knowledge.

2. I am the attorney of record on this case representing the Plaintiff Pacific Northwest Regional Council of Carpenters ("the Council") and its member Bill Jenkins.

3. On August 5, 2016 I requested in accordance with the Western Washington

Master Labor Agreement that this grievance be mediated through the Federal Mediation and Conciliation Services ("FMCS"). The FMCS assigned Commissioner Jennifer Nitschke as the mediator. Exhibit 1 is the email from FMCS indicating that Commissioner Nitschke had been assigned as the mediator.

4. Mediation was scheduled by mutual agreement of the parties for November 4, 2016. However, Defendant Kelaye Concrete, LLC ("Kelaye") failed to appear at the mediation and, as a result, Commissioner Nitschke released the parties from the mediation. Exhibit 2 is the email from Commissioner Nitschke indicating that the mediation had been terminated due to Kelaye's failure to attend and excusing the Council from the mediation.

5. On November 7, 2016 I informed Kelaye that its refusal to mediate required the Council to advance the grievance to the arbitration step consistent with the Master Labor Agreement. The following day, I requested a list of seven arbitrations from FMCS and provided that list to Kelaye. I also indicated our first arbitrator strike as required by the master labor agreement. Kelaye refused to respond to that notice. Exhibit 3 is a series of emails between myself and Rebekah Williams, owner of Kelaye, regarding the initiation of the arbitration of this grievance.

6. On November 10, 2016 I notified Ms. Williams that her continued refusal to select an arbitrator constituted a refusal to arbitrate. I also let her know that if she refused to arbitrate this matter, that the Council would have no choice but to pursue the issue through a civil action in the district court. I requested that Ms. Williams respond to the request for an arbitrator strike by the end of the day. Ms. Williams indicated that she would forward the matter to her

attorney. I requested the contact information of her attorney in order to complete the arbitrator selection. Ms. Williams failed to provide either the contact information of her attorney or an arbitrator strike. Exhibit 4 is a true and correct copy of this email exchange with Ms. Williams.

7. On November 16, I again followed up with Ms. Williams because she had not responded to my request for an arbitrator strike or her attorney's contact information. I attempted to set up a phone call with Ms. Williams in order to complete the selection of an arbitrator. Ms. Williams did refused to set up a call when she would be in the office to discuss the matter. Exhibit 5 is the email exchange with Ms. Williams reflecting this exchange. Ms. Williams did not respond to my final email to her requesting to schedule a call.

8. On November 17 and 18, 2016, I submitted the Council's final demands to Kelaye to participate in the selection of an arbitrator and a clear explanation of how to do so. Despite this final demand, Kelaye still refused to select an arbitrator. Kelaye also failed to provide any legal or factual specification for its refusal to mediate or arbitrate this matter. Exhibit 6 is a true and correct copy of my final email exchange with Ms. Williams.

9. As a result of Kelaye's failure to comply with the dispute resolution provisions of the master labor agreement, the Council has no choice but to file this case with the United State District Court. As a result, the Council has been forced to incur costs and attorney fees in pursuing this civil action. Exhibit 7 to this Declaration is a billing summary for this matter derived from our contemporaneous billings to the Council showing \$2,000 in attorney fees and \$524.82 in costs on this matter through March 31, 2017.

10. In addition, for the month of April, I have expended 10.2 hours at \$250 per hour for a total of \$2,625 that is not reflected on that summary of the billings. This brings the total fees incurred by the Council to \$4,625 and the total costs to \$524.82, for a grand total of \$5,149.82 in costs and fees.

11. I graduated with honors from Lewis & Clark Law School in the spring of 2003 and I was admitted to the Oregon State Bar in the fall of 2003. I am also admitted to practice before the United States District Court for the District of Oregon, the Ninth Circuit Court of Appeals, and the United States Supreme Court. After graduating law school, I worked for two years as a judicial law clerk to the Hon. Jack L. Landau on the Oregon Court of Appeals. In that capacity, I assisted in the research and drafting of numerous appellate opinions on one of the busiest state appellate courts in the nation. After clerking for Judge Landau, I was hired by Haglund Kelley in August, 2005, and I have been a partner at the firm since 2012.

12. In my time with the firm, I have been involved in a wide variety of cases, all of which have required efficient and precise legal research, analysis, and writing. To date, I have participated as second chair in the successful prosecution of numerous employment cases to a successful conclusion in plaintiff's favor by way of either decision or settlement. On all of those cases, I have been significantly involved in the research and drafting of all legal pleadings and memoranda, briefing and argument of dispositive and discovery motions, and participating in trial and arbitral proceedings as second chair.

13. In addition, I have also served as lead counsel on numerous cases on behalf of my own clients, including the Council. In those cases, I am solely responsible for developing the case

strategy, as well as researching and drafting all of the pleadings and arguing all matters before the Court, Arbitrator, and/or jury. In addition, I have supported the other partners of this firm by researching and drafting countless legal pleadings and memoranda in State and Federal Court, often under tight time deadlines. As a result of these experiences, my research, legal analysis and writing skills have become focused and efficient.

14. The hourly rate that the firm charges the Council for my time is \$250. This rate is very competitive for attorneys in the Portland area such as myself with between 13-15 years of experience. As shown in the Oregon State Bar Economic Survey for 2012, excerpts of which are attached as Exhibit 8, the median hourly for attorneys in my category is \$300.

I understand that the foregoing statements are made for use in a civil proceeding and I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED this 10th day of April, 2017.

HAGLUND KELLEY LLP

By: 
Matthew E. Malmsheimer, OSB No. 033847
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of April, 2017, I served the foregoing

DECLARATION OF MATTHEW E. MALMSHEIMER, on the following:

Kelaye Concrete LLC
Attn: Rebekah Williams
20330 SE Hwy 212
Damascus OR 97015
rebekah@kelayeconcrete.com

by the following indicated method(s):

- ☒ by **mail** with the United States Post Office at Portland, Oregon in a sealed first-class postage prepaid envelope.
- ☒ by **email**.
- ☐ by **hand delivery**.
- ☐ by overnight mail.
- ☐ by **facsimile**.
- ☐ by the court's Cm/ECF system.



Matthew E. Malsheimer, OSB No. 033847
Attorney for Plaintiff